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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,144	02/28/2002	David Engel	87335.3481	5030
30734	7590	10/01/2003	EXAMINER	
BAKER + HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No.	Applicant(s)	
	10/084,144	ENGEL, DAVID	
	Examiner	Art Unit	
	David L. Sorkin	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 31 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 19-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>01/31/03</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18 and 28, drawn to a housing, classified in class 464, subclass 170 for the claims which do not require a seal, class 277 subclass 628 for claims which require a seal.
 - II. Claims 19-24, drawn to mixer, classified in class 366, subclass 331.
 - III. Claims 25-27, drawn to a methods of covering and sealing a drive assembly, classified in class 277, subclass 312.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a housing. The subcombination has separate utility such as covering a drive of a centrifuge or pump.
3. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP §

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806.05(e)). In this case the apparatus could be used to cover something other than a drive assembly, such as a filter.

4. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case method could be carried out by covering or sealing the drive of a centrifuge or pump, rather than a mixing apparatus.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and the search required for each Group is different, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Stephen S. Fabry on 25 September 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-18 and 28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 5-8, 10-18 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bratt (4,744,900). Note: it is considered that no "drive component" is required by any of the elected claims (1-18 and 28) and that any mention of a "drive component" in the claims is with regard to what the claimed housing is intended "for covering". Regarding claim 1, Bratt ('900) discloses a housing comprising a cover (24) and a first support (22) that supports the cover. Regarding claim 2, the cover comprises a circular wall and two opposite ends (see Figs. 1 and 5). Regarding claim 3, said cover is a hollow cylinder having a constant diameter (see Fig. 1). Regarding claim 5, a second support (22) supports said cover. Regarding claim 6, the first support includes a first flange having a diameter greater than said the diameter of the cover and a shoulder having a diameter less than the diameter of the cover (see Fig. 1). Regarding claim 7, said second support includes a second flange having a diameter less than the diameter of the cover (see Figs. 1 and 3). Regarding claim 8, said second support includes a second flange having a diameter less than the diameter of the cover (see Figs. 1 and 3). Regarding claim 10, a first sealing element (26) is disposed between said shoulder and said cover. Regarding claim 11, a second sealing element (26) is disposed between the flange and said cover. Regarding claim 12, a second sealing element (26) is disposed between the flange and said cover. Regarding claim 13, the first and second sealing elements are O-rings (see col. 2, line 5). Regarding claim 14, Bratt ('900) discloses a housing comprising a cover (24) and a first sealing element (26). Regarding claim 15, a

second sealing element (26) seals the cover. Regarding claim 16, the sealing elements are O-rings (see col. 2, line 5). Regarding claim 17, the cover comprises a circular wall and two opposite ends (see Figs. 1 and 5). Regarding claim 18, said cover is a hollow cylinder having a constant diameter (see Fig. 1). Regarding claim 28, Bratt ('900) discloses a housing comprising means (24) for covering, means (22) for supporting and means (26) for sealing.

10. Claims 1-3, 5, 7, 11, 14-18 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by King (US 2,0801,040). Regarding claim 1, King ('040) discloses a housing comprising a cover (37) and a first support (46,47) that supports the cover. Regarding claim 2, the cover comprises a circular wall and two opposite ends (see Fig. 6; page 2, col. 2, lines 63-69). Regarding claim 3, said cover is a hollow cylinder having a constant diameter (see Fig. 6; page 2, col. 2, lines 63-69). Regarding claim 5, a second support (the other 46,47) supports said cover. Regarding claim 7, said second support includes a second flange having a diameter less than the diameter of the cover (see Fig. 6). Regarding claim 11, a second sealing element (2) is disposed between the flange and said cover. Regarding claim 14, King ('040) discloses a housing comprising a cover (37) and a first sealing element (2). Regarding claim 15, a second sealing element (the other 2) seals the cover. Regarding claim 16, the sealing elements are O-rings (see Figs. 6 and 7). Regarding claim 17, the cover comprises a circular wall and two opposite ends (see Fig. 6; page 2, col. 2, lines 63-69). Regarding claim 18, said cover is a hollow cylinder having a constant diameter (see Fig. 6; page 2, col. 2, lines

63-69). Regarding claim 28, King ('040) discloses a housing comprising means (37) for covering, means (46,47) for supporting and means (2) for sealing.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratt ('900). The housing of Bratt ('900) was discussed above. Regarding claim 4, Bratt ('900) further discloses that the cover may be stainless steel (see col. 2, line 61). While Bratt ('900) does not discuss welding, "[t]he patentability of a product does not depend on its method of production" *In re Thorpe* 227 USPQ 964, 966 (Fed. Cir. 1985). Bratt ('900) does not disclose that the cover is "six-inch". However, it has been held that selecting size would have been obvious to one of ordinary skill in the art. See *In re Rose* 105 USPQ 237 (CCPA 1955) and *Garder v. TEC Systems, Inc.* 220 USPQ 777 (Fed. Cir. 1984). Regarding claim 9, Bratt ('900) does not specifically state that the first flange is stainless steel; however, Bratt ('900) explains that the purpose of the invention is to permit the use of stainless steel as a material for the housing (see col. 1, lines 5-40 and col. 2, lines 60-64). It is considered that this would have suggested to one of ordinary skill in the art to have made specific components of the housing, including the first flange, of stainless steel.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin



CHARLES E. COOLEY
PRIMARY EXAMINER